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Testimony
Before the Committee on Resources
United States House of Representatives

Legislative Hearing on H.R. 4893:

“A bill to amend section 20 of the Indian Gaming Regulatory Act to restrict off-reservation gaming.”

April 5, 2006

Introduction

The North Fork Rancheria of Mono Indians first wishes to thank Chairman Pombo for the opportunity to appear before the Committee today and provide our Tribe's story as well as our perspectives on H.R. 4893, a bill to amend the Indian Gaming Regulatory Act of 1988. While the Tribe has concerns about the specific proposals contained in this legislation, we understand the circumstances that have caused the Chairman to introduce this bill and also understand his perspectives in wanting to further tighten the authority of restored and newly-recognized tribes to acquire land for gaming beyond those already contained in section 20 of the IGRA. I would like to focus my statements on what we believe are unintended consequences of this bill and specifically, how it would preclude the Tribe from engaging in gaming on restored lands located within our modern day and ancestral homelands - an effort that we have pursued with strong local support for over two years.

Tribal History

The North Fork Rancheria of Mono Indians is a federally recognized Indian tribe with governmental offices in Madera County, California and the largest restored tribe in California. Our ancestors were Northfork Mono, and also included members of local Yokut and Miwok tribes. Historically, our ancestors used and occupied overlapping territories of the San Joaquin Valley tribes, gaining access to specific regions through a complex and interdependent system of social, political, and economic ties between Native groups.

The arrival of non-Natives in the San Joaquin Valley, as early as the 1810s, thoroughly disrupted our life there, as our ancestors were pushed farther and farther into the foothills and mountains, in order to flee from the kidnapping, violence, and disease which decimated our populations. With the 1849 California Gold Rush, tensions between Native peoples and miners as well as settlers escalated rapidly in the San Joaquin Valley, and culminated in the Mariposa Indian War of 1850-51. The Gold Rush accelerated the destruction of Native society to a pace never before seen in North America, as literally a million new immigrants came to California in the span of a few years to seek gold on our lands. In response the federal government sent three treaty commissioners to California to negotiate treaties for peace and the cession of land in exchange for the establishment of reservations. The interests of the Northfork Mono were represented directly in the ensuing treaty negotiations by trusted chiefs of neighboring Mono and non-Mono tribes with whom we had kinship and socio-political ties. The April 29, 1851, treaty expressly provided that our ancestors were intended beneficiaries of the treaty. This and two other treaties reserved adjacent tracts of Native lands on the Valley floor where the present-day City of Madera is located and near the site for our proposed gaming facility.

The lands reserved in these treaties were quickly overrun by settlers, ranchers, miners and, later, farmers, leaving only a series of small “Indian farms” operating over a large area. One of these, the Fresno River Farm, was located in the immediate vicinity of the present-day City of Madera and later became the headquarters for the entire reservation. Although Congress eventually refused to ratify the treaties based on objections from the California Legislature, by 1854 the Fresno River Farm or Reservation was viewed as one of the five reservations authorized by Congress a year earlier. In 1856, the Indian Agent for the Fresno River Reservation identified a significant number of our tribal ancestors who lived on, visited, and recognized the Reservation as their home and headquarters. At the same time, most of our ancestors integrated the Reservation into their yearly subsistence cycle, spending part of the year on reservation lands cultivating crops and collecting treaty-stipulated goods, and part of the year off reservation grounds hunting, gathering, and fishing. Operation of the Reservation was plagued with problems, however, and in 1860 the Reservation was closed. Our tribal ancestors subsequently integrated into the mining, lumber, ranching, and agricultural economies, thereby adapting their use and occupancy of the Valley floor and foothills to supply their subsistence in new ways.

Beginning in the 1890's, the federal government made a limited number of land allotments to Native people. Because very few public domain lands were available, the government turned to the National Forests for lands that could become Indian allotments. Consequently, most lands allotted to Tribal ancestors were in the Sierra National Forest, although some were within approximately 18 miles from the City of Madera. In 1903, a Presbyterian Mission was established in the town of North Fork. Native parents began sending their children to be educated and sheltered at the Mission while continuing their migratory patterns by working as wage laborers on farms and logging operations in the San Joaquin Valley. In 1916, at the urging of the Mission, the Federal Government purchased the 80-acre North Fork Rancheria next to the Mission to provide shelter to Indian families whose children were attending the Mission. The rocky soil and precipitous landscape were unsuitable for farming, however, and the Rancheria never was able to support more than a few families.

In 1961, the federal government terminated the Tribe's federally recognized status and transferred the Rancheria land to fee for the lone resident then living on the Rancheria. The Tribe's status as a federally recognized Indian tribe was restored in 1983 under a stipulation for entry of judgment in *Tillie Hardwick v. United States of America*, No. C-79-1710-SW (N.D.Cal 1983). Four years later, the lands within the Rancheria boundaries were restored to the status of "Indian Country" as part of the same lawsuit under a stipulation for entry of judgment for Madera County. The lands within the Rancheria boundaries were subsequently transferred into trust for the benefit of the six individuals who had been residing on the land, not for the Tribe.

The Tribe subsequently opened an office in rented quarters in the early 1990's, adopted its Constitution in 1996, and since then has used its limited funding to establish a modern tribal government. We have purchased lands for tribal housing and are currently constructing a community center and single-family homes for tribal citizens on those lands. Our tribe has also assumed responsibility for administering Temporary Aid for Needy Families for Indians residing in Madera, Merced, and Mariposa Counties. We have an active environmental department and are working to maintain our language and culture. I am very proud that today, our Tribe is the largest restored tribe in California with some 1380 tribal citizens.

Economic Self Sufficiency

Like other California tribes whose restored reservations are nothing more than several dozen acres of inadequate lands, and which are held in trust for a few tribal members, we have sought to acquire gaming-eligible trust lands on which to provide economic development opportunities for our tribal citizens. Our own Rancheria sits on a rocky hillside adjacent to the Sierra National Forest about a 40 minute drive from Yosemite National Park, and can only be accessed from a dirt road. Neither the Tribe, the local community, nor the state of California consider the Rancheria to be appropriate for commercial development, and any such development would do little to advance the needs of either the Tribe or the larger community.

Consequently, in 2003, the Tribe approached its local district supervisor for the County of Madera about working cooperatively to identify an appropriate location for a gaming facility on historical tribal lands in Madera County. The County agreed, recognizing the opportunity to diversify its agriculturally based economy and to lower unemployment rates that hover around 12% in the County and as high as 25% in the City of Madera. Working cooperatively with the County, the Tribe eventually identified a 305 acre parcel in an unincorporated area just north of the City of Madera in Madera County, California. The parcel is located near the former reservation where our ancestors worked and lived in the 1850's. Developing our proposed gaming and entertainment project at this location would be consistent with the land use and development plans of the County. Further, it would avoid impacts to the environmentally sensitive foothills and minimize the impact to the gaming operations of neighboring tribes. Although the lands may qualify as restored lands under Section 20, we have requested the Secretary to make a determination that the lands are eligible for gaming under the two-part process under Section 20(b)(1)(A) of IGRA.

Community Benefits

- In August 2004, following two well publicized and attended public meetings, the Madera County Board of Supervisors unanimously approved a Memorandum of Understanding with the Tribe in which the Tribe has agreed to provide \$87 million over 20 years for mitigation of project impacts on the County and for sustained charitable giving. A year later, in August 2005, the Madera County Board of Supervisors passed a second resolution in support of the Tribe's proposed project at the proposed location. I believe the committee is in receipt of written testimony from Madera Supervisor Gary Gilbert that outlines the County's support of the Tribe's project.

In October 2004, the Bureau of Indian Affairs issued a Notice of Intent to prepare an environmental impact statement for the project pursuant to the National Environmental Policy Act. Once the draft environmental impact statement is issued early in the summer of 2006, the Tribe also expects to enter into additional agreements with the City of Madera and Caltrans, and likely other entities, to mitigate any project impacts on roads and other resources within their respective jurisdictions which are identified in the report.

The North Fork project has become something of a model for responsible development – one where the Tribe, working with the County, has identified an environmentally and economically viable location within our homeland to provide sorely needed economic resources to a struggling local economy. The proposed destination resort and hotel is expected to create 1500 living wage jobs plus 750 additional construction jobs. The majority of jobs are expected to be secured by Madera residents. The project is also expected to stimulate an additional 2100 jobs and provide increased discretionary spending from payroll and additional income to local businesses.

The Tribe's announcement has resulted in a significant number of proposals for large retail and other commercial development in the immediate vicinity of the Tribe's proposed site. Development of any one of the proposals would result in millions in sales tax revenue for the cash-strapped City of Madera and hundreds of new jobs in an area with one of the highest unemployment rates in California. However, potential developers have indicated that their projects will not be built unless the Tribe is able to construct its proposed resort. Much is at stake here both for the Tribe's nearly 1400 citizens and for thousands of area residents looking for jobs and a better life for their children.

- Community Support

As I have indicated, our project is distinguished by its strong local support, its emphasis on collaboration, its adherence to the spirit and letter of the law and its goal of improving the lives of all Madera County residents. It offers the promise of economic vitality for the Tribe, the community and the state through the creation of living-wage/full-benefit jobs, sustained charitable contributions and significant shared revenues.

Concerns Regarding HR 4893

Yet despite all this, our project would never be able to satisfy all of the requirements in the proposed legislation. Indeed, it seems unlikely that any tribe in the country, particularly in California, could satisfy the requirements of this legislation. Most problematic is the requirement that requires the concurrence of any tribe within 75 miles of the proposed site. This effectively provides other tribes without jurisdiction or land use authority over the lands the power to veto another tribe's gaming project for competitive reasons. There are 107 federally recognized tribes in California, and five are within 75 miles of our proposed site. The two tribes with the largest gaming facilities in our area, despite our best efforts, oppose our project for competitive reasons. We believe this provision is anti-competitive, in that it provides tribes the power to stop any project that might compete with existing gaming facilities. The nearby tribe requirement usurps the land use and development planning authority of local jurisdictions by providing a nearby tribe the power to veto a project supported by a local jurisdiction. While we agree that nearby tribes can and should be consulted by the Secretary as part of the process, they should not have the same power as the Secretary or the Governor.

We also request that the Committee eliminate the requirement for concurrence by the state legislature of the Secretary's decision to approve an application. This bill already provides for concurrence by the Governor, which has only occurred three times in the eighteen years since IGRA was enacted. Given the governor's role as chief executive of the state, it is unlikely a governor would concur in a decision by the Secretary without strong local support. Under his May 2005 proclamation, California's Governor states that he will consider concurring in determination by the Secretary only when there is local support and the project satisfies an independent public policy. Requiring the additional concurrence of the state legislature simply provides successful gaming tribes, who enjoy tremendous influence with the state legislature, additional power to veto projects that threaten their competitive position.

We also question the need for a county wide referendum. We elect our officials to make the tough decisions concerning land use and development. Those officials have the power under California law, and presumably in other states, to call for an advisory vote when appropriate. In Madera County, the Board of Supervisors does not require an advisory vote or referendum when approving large or controversial developments, whether that be a new Walmart or rock quarry, and we do not see why the federal government should impose such a requirement for a gaming development. This is particularly true for our project where the County has thoroughly considered the issue and entered into a binding agreement with our Tribe regarding future land use, development, and jurisdictional issues. A referendum simply creates another opportunity for competitive interests to spend hundreds of thousands of dollars in creating a high profile political campaign that ultimately has little to do with what the residents of the affected community want.

As you can see, this well-intentioned legislation will have significant unintended consequences on our tribe. Our tribe has been following the spirit and letter of the law for over two years. In the process, we, along with the County and the local community, have invested enormous time and resources. It would be unfair to change the rules on us and on the community at this stage, particularly given our inequitable land situation and the fact that our proposed site is within our home county and on lands which our people have used and occupied for centuries. We urge the Committee to consider adding a grandfather provision that would allow us to continue through the process under existing law.

I appreciate this opportunity to submit comments to the Committee.